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CITY AND COUNTY OF SAN FRANCISCO,
LADRON DURIO, AND JAMES MOORE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GLADYS DEWITT,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, SAN FRANCISCO
GENERAL HOSPITAL, LADRON
DURIO, JAMES MOORE, and DOES 1 –
25,

Defendants.

Case No. 07-3791 PJH

**DEFENDANTS CITY AND COUNTY
OF SAN FRANCISCO'S AND
LADRON DURIO'S REPLY IN
SUPPORT OF MOTION TO DISMISS
MEMORANDUM OF POINTS AND
AUTHORITIES (F.R.C.P. 12(b)(6))**

Date: November 7, 2007

Time: 9:00 a.m.

Place: Courtroom 3, 17th Floor

Trial Date: Not yet set

1 Plaintiff Gladys DeWitt ("DeWitt") concedes that she fails to state a viable claim for relief
2 as to all but one cause of action. As to that one cause of action, promissory estoppel, Plaintiff
3 provides no argument in opposition to Defendants' argument that Plaintiff cannot state a cause of
4 action for promissory estoppel as a matter of law. Accordingly, Defendants' motion to dismiss as to
5 all causes of action should be granted.

6 Furthermore, Plaintiff's proposed amendments to the complaint would be futile. The Ninth
7 Circuit has held that "the class-of-one theory of equal protection is inapplicable to decisions made
8 by public employers with regard to their employees." *Enquist v. Oregon Dept. of Agriculture*, 478
9 F.3d 985, 996 (9th Cir. 2007), *petition for cert. filed*, 76 USLW 3199 (Oct 5, 2007). And Plaintiff
10 cannot bring a claim under FEHA, because she has never alleged that she filed an administrative
11 charge, which is a jurisdictional prerequisite. Cal. Gov't Code §12960; *Carter v. Smith Food King*,
12 765 F.2d 916, 921 (9th Cir. 1985).

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14 Dated: October 24, 2007

Respectfully submitted,

DENNIS J. HERRERA

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20 By: /s/
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